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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JUAN FLORES-MENDEZ, an individual and
AMBER COLLINS, an individual, and on
behalf of classes of similarly situated
individuals,

Plaintiffs,

v.

ZOOSK, INC., a Delaware corporation; and
SPARK NETWORKS SE, a German
corporation,

Defendants.

Case No. 3:20-cv-04929-WHA

**DECLARATION OF KILEY L.
GROMBACHER IN SUPPORT OF
STIPULATION AND PROPOSED ORDER
STAYING CASE FOR 90 DAYS
DUE TO COVID-19 RELATED
JURISDICTIONAL DISCOVERY DELAYS**

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1 I, Kiley L. Grombacher, declare:

2 1. I am an attorney licensed to practice before all courts of the State of California. I
3 am a member in good standing of the State Bar of California and admitted to practice before this
4 Court. I am counsel for Plaintiffs Juan Flores-Mendez and Amber Collins (“Plaintiffs”) in this
5 proposed class action.

6 2. This Declaration is filed in support of the parties’ Stipulation and Proposed Order
7 Staying Case for 90 Days Due to COVID-19 Related Jurisdictional Discovery Delays.

8 3. On January 30, 2021, the Court held in abeyance Defendant Spark Networks SE’s
9 (“Spark”) motion to dismiss for lack of personal jurisdiction pending jurisdictional discovery and
ordered that Plaintiffs may take up to three depositions of seven hours each (ECF No. 61).

10 4. The Court set a deadline of April 1, 2021 for supplemental briefing by Plaintiffs
11 regarding jurisdiction over Spark (ECF No. 61).

12 5. On February 17, 2021, Plaintiffs noticed the depositions of Gitte Bendzulla,
13 Benjamin Hoskins, and Grant Kessler (the “Witnesses”) for March 24, 25, and 26, 2021,
14 respectively.

15 6. The Witnesses were identified by Spark as having discoverable information in its
Amended Initial Disclosures dated February 5, 2021.

16 7. The deposition notices state that the depositions are to occur at the law office of
17 Bradley/Grombacher LLP, 31365 Oak Crest Drive, Suite 240, Westlake Village, CA 91361.

18 8. When Plaintiffs served these deposition notices they stated that they “expect[ed]
19 to meet and confer regarding the location and mechanism of the deposition, e.g. by Zoom or other
20 videoconference medium[,]” although Plaintiffs maintain that the noticed location was proper and
21 that the Court has the authority to order the Witnesses to appear in Los Angeles, while Spark
22 disputes the propriety of the Witnesses’ being noticed or ordered to appear in Los Angeles for
deposition.

23 9. The Witnesses are all residents of Germany and all of the individuals identified by
24 Spark in its Amended Initial Disclosures as having discoverable information are residents of
25 Germany.

1 10. Due to travel restrictions and the increased health risk associated with travel during
2 the COVID-19 pandemic, it would be either impossible or unduly burdensome for the Witnesses
3 to travel outside Germany or for counsel for the parties to travel to Germany for purposes of
4 depositions of the Witnesses being taken.

5 11. The parties conferred and Spark agreed to make the Witnesses available for remote
6 deposition in Germany via Zoom on the noticed dates.

7 12. On March 16, 2021, counsel for Spark advised Plaintiffs that it had learned
8 German law prohibits the taking of depositions in Germany for purposes of a US litigation except
9 at the U.S. Consulate General in Frankfurt, Germany, under threat of criminal penalties against
10 the participants in unauthorized depositions. *See, e.g.,* MACOM Tech. Sols. Holdings, Inc. v.
11 Infineon Techs. AG, No. CV162859CASPLAX, 2017 WL 2999036, at *3–4 (C.D. Cal. May 25,
12 2017) (“the United States State Department has indicated that taking
13 a deposition in Germany without the prior approval of the German Ministry of Justice and/or
14 without the involvement of the United States Mission may lead to criminal penalties against the
15 participants”).

16 13. The U.S. Consulate General in Frankfurt, Germany is not currently permitting
17 parties to conduct or schedule depositions in Germany.

18 14. Under Fed. R. Civ. P 30(b)(4) a deposition taken by remote means is deemed to
19 take place where the deponent answers the questions.

20 15. Plaintiffs and Spark therefore cannot both comply with German law and complete
21 the depositions noticed by Plaintiffs pursuant to the Court’s January 30 Order prior to the April 1
22 supplemental briefing deadline set forth in that Order.

23 16. The parties have accordingly concluded that given the current circumstances it is
24 not possible for the Witnesses to give deposition testimony prior to April 1, 2021.

25 17. The parties have worked and will continue to work cooperatively in a good faith
effort to agree upon either (a) a mechanism for taking depositions of the Witnesses in Germany
in a manner that is safe, not unduly burdensome to the parties or the Witnesses, and not in
violation of German law or (b) a workaround solution whereby Plaintiffs could obtain sworn

1 testimony from the Witnesses by some means that is safe and not unduly burdensome to the
2 parties or the Witnesses, other than by taking depositions of the Witnesses in Germany or (c)
3 some other workaround solution whereby Plaintiffs could obtain equivalent discovery by some
4 means, other than by taking depositions of the Witnesses, that is safe and not unduly burdensome
5 to the parties or the Witnesses.

6 18. By agreeing to work cooperatively in the manner described above, no party is
7 thereby agreeing that any of the approaches specified above is or will be an appropriate approach
8 for addressing the current inability of the Witnesses to give deposition testimony, and all parties
9 reserve their rights to object to any of the approaches specified above and any other approach
10 should an agreement of the sort contemplated above not be reached by the parties and should the
11 Court need to resolve the matter of how to address the current inability of the Witnesses to give
12 deposition testimony.

13 19. The European Union has recently proposed loosening travel restrictions in the near
14 future.
([https://www.npr.org/2021/03/17/978188017/eu-officials-propose-digital-travel-certificates-](https://www.npr.org/2021/03/17/978188017/eu-officials-propose-digital-travel-certificates-vaccination-not-required)
15 vaccination-not-required)

16 20. The parties believe that a stay of 90 days will likely allow the parties to reach an
17 agreement whereby depositions of the Witnesses can be taken in Germany or a workaround
18 solution can be implemented during the period of the stay.

19 21. The parties agree to a commensurate 90-day extension of all other case deadlines.

20 22. Plaintiffs have agreed, subject to the Court's approval of the accompanying
21 Stipulation, to postpone the depositions of the Witnesses *sine die*, subject to the parties further
22 conferring during the course of the stay as described above, and without prejudice to any right
23 Spark or the Witnesses might have to object to such depositions as noticed by Plaintiffs.

24 23. This is the parties' first request for any such extensions.
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1 Executed under penalty of perjury under the laws of the United States of America, this 21st day
2 of March, 2021.

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4 /s/ Kiley L. Grombacher
5 Kiley L. Grombacher
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